RECORD AND BRIEFS

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No. 16-466

IN THE

# Supreme Court of the United States

BRISTOL-MYERS SQUIBB COMPANY,

*Petitioner,*

v.

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN FRANCISCO, *et al.*,

*Respondents.*

**On Writ of Certiorari to the California Supreme Court**

## BRIEF OF WASHINGTON LEGAL FOUNDATION AND ALLIED EDUCATIONAL FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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## QUESTION PRESENTED

The Due Process Clause permits a state court to exercise specific jurisdiction over a defendant only when the plaintiff's claims "arise out of or relate to" the defendant's forum activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (citation omitted). The question presented is:

Whether a plaintiff's claims arise out of or relate to a defendant's forum activities when there is no causal link between the defendant's forum contacts and the plaintiff's claims—that is, where the plaintiff's claims would be exactly the same even if the defendant had no forum contacts.

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## INTERESTS OF *AMICI CURIAE*

Washington Legal Foundation (WLF) is a non-profit public-interest law firm and policy center with supporters in all 50 states.[1] WLF devotes a substantial portion of its resources to defending free enterprise, individual rights, a limited and accountable government, and the rule of law.

To that end, WLF has appeared frequently in this Court in cases involving personal jurisdiction issues, to support defendants seeking to avoid being subject to a court's coercive powers when assertion of jurisdiction does not comply with traditional notions of fair play and substantial justice. *See, e.g., BNSF Railway Co. v. Tyrrell, cert. granted,* ___ U.S. ___, 2017 WL 125672 (Jan. 13, 2017); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011); *Novo Nordisk A/S v. Lukas-Werner, cert. denied*, 134 S. Ct. 423 (2013). WLF also filed briefs in support of Petitioner in the California Supreme Court and at the certiorari petition stage.

The Allied Educational Foundation (AEF) is a nonprofit charitable and educational foundation based in Tenafly, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study, such as law and public policy, and has appeared as *amicus curiae* in this Court on a number of occasions, including in *BNSF Railway Co. v. Tyrrell.*

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[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than *amici* and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing; letters of consent have been lodged with the Court.

In its seminal decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), the Court made clear that the courts of a State lack personal jurisdiction over a corporate defendant unless its activities within the State give rise to the claims being asserted or unless the corporation is "at home" within the forum State. *Daimler* further clarified that a corporation, even one that conducts substantial business in all 50 States, should be deemed "at home" in no more than one or two of the States. *Amici* are concerned that the rationale of the California Supreme Court, unless overturned by this Court, would essentially negate *Daimler* as an effective check on state-court jurisdiction over out-of-state corporate defendants. *Amici* are further concerned that the decision below deprives businesses of adequate means to structure their conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.

## STATEMENT OF THE CASE

Like many corporations that sell products nationwide, Petitioner Bristol-Myers Squibb Co. ("BMS") sells a large number of products in California. For example, BMS's Plavix sales in California between 2006 and 2012 totaled nearly $1 billion. This case addresses whether those substantial sales are sufficient to justify California's exercise of jurisdiction over claims filed by nonresidents who allege that their purchase and use of Plavix—and their alleged injury from such use—all occurred outside California.

A State's exercise of personal jurisdiction over a corporation based on business activity within the State

that is not directly related to events giving rise to the litigation is often referred to as an exercise of "general jurisdiction." *Daimler* made clear that a State may not exercise general jurisdiction over a corporation when, as here, the corporation is neither incorporated in nor has its principal place of business within the State (nor is otherwise effectively "at home" in the State), even when the corporation has substantial sales within the State. This case addresses whether nonresidents may nonetheless invoke the California courts' personal jurisdiction over such a corporation by citing those very same substantial sales as the basis for "specific jurisdiction."

These products liability actions involve allegations that consumers from across the nation suffered injuries after taking Plavix, a drug approved by the Food and Drug Administration for use in preventing dangerous blood clots. A total of 661 plaintiffs—86 California residents and 575 nonresidents—joined together to file eight separate complaints against BMS in March 2012 in San Francisco Superior Court.[2] The 575 nonresident plaintiffs claim no contacts with BMS's California activities or with California generally. Moreover, although BMS derives substantial revenue from California sales, those sales represent but a small

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[2] The decision by plaintiffs' lawyers to file eight separate complaints (each with fewer than 100 plaintiffs) was not coincidental. Had any of the complaints included 100 or more plaintiffs, BMS's right to remove that complaint to federal court under the Class Action Fairness Act (CAFA) would have been beyond question. *See* 28 U.S.C. § 1332(d)(11)(B)(i) (authorizing removal of a "mass action" in which the monetary claims of "100 or more persons are proposed to be tried jointly.").

fraction of BMS's overall sales, and California is not the State in which BMS is incorporated (Delaware), not the State in which it maintains its principal place of business (New York), and not even one of the States in which Plavix is manufactured.

The California Supreme Court nonetheless held that California could maintain personal jurisdiction over BMS with respect to the claims not only of the 86 California residents (an issue that BMS does not contest) but also with respect to the 575 nonresident plaintiffs (the "Respondents").

When the case first came before the California Court of Appeal, it summarily denied BMS's writ petition (seeking review of the superior court's conclusion that it could exercise general jurisdiction over BMS based on the company's substantial business activity in California). Following the 2014 *Daimler* decision, the California Supreme Court directed the appeals court to address the merits of BMS's petition. It did so and concluded that although *Daimler* precluded assertion of *general* jurisdiction over BMS with respect to the claims of the nonresident defendants, California courts could still assert *specific* jurisdiction over BMS. Pet. App. 91a-146a.

A sharply divided California Supreme Court affirmed. Pet. App. 1a-90a. The four-justice majority recognized that the Due Process Clause bars California courts from exercising specific jurisdiction over BMS unless Respondents can demonstrate that their claims "arise out of or are related to [BMS's] forum-related activities." Pet. App. 20a-21a. While it did not assert that the claims of Respondents "arise out of" any of

BMS's California-based activities, the majority concluded that BMS's activities were sufficiently "related to" those claims to warrant the exercise of personal jurisdiction. *Id.* at 25a-35a.

The majority held that, in order to satisfy the "related to" requirement, "the defendant's activities in the forum state need not be either the proximate cause or the 'but for' cause of the plaintiff's injuries." *Id.* at 22a. Instead, in accord with prior California Supreme Court case law, the majority held that it is sufficient to demonstrate "a substantial nexus or connection between the defendant's forum activities and the plaintiff's claims." *Id.* at 21a. It elaborated:

> Under the substantial connection test, the intensity of forum contacts and the connection of the claim to those contacts are inversely related. The more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim. Thus, a claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction. Indeed, only when the operative facts of the controversy are not related to the defendant's contact with the state can it be said that the cause of action does not arise from that contact.

*Id.* at 22a (citations omitted).

The majority acknowledged that Respondents were not injured by Plavix in California, were not treated in California, were not prescribed Plavix by California doctors, and did not have their prescriptions filled by California pharmacists. It further acknowledged that BMS neither developed nor manufactured Plavix in California, and that the distribution chain for the Plavix supplied to Respondents did not pass through California. The majority based its "substantial connection" finding on evidence that BMS: (1) extensively marketed Plavix to California residents as part of a nationwide marketing program; (2) contracted with McKesson Corp. (a California corporation) to distribute Plavix and hired several hundred salespersons within the State; and (3) maintains facilities in California that research and develop other BMS products (but not Plavix). *Id.* at 32a.

Justice Werdegar, joined by Justices Chin and Corrigan, dissented. Pet. App. 46a-87a. She concluded, "[*T*]*he record contains no evidence connecting the Plavix taken by any of the nonresident plaintiffs to California.*" *Id.* at 47a (emphasis in original). She argued that the majority's conclusion that California could exercise jurisdiction over BMS in connection with Respondents' claims was based on a specific-jurisdiction standard that conflicts with the standard adopted by this Court and numerous other appellate courts. *Id.* at 51a-77a. She warned that the decision interferes with rational business planning by undermining the ability of businesses to predict the types of litigation to which they expose themselves when they decide to undertake activities within a State. *Id.* at 79a-80a.

## SUMMARY OF ARGUMENT

As the Court has repeatedly reminded, the Fourteenth Amendment's Due Process Clause imposes strict limits on the authority of a state court to exercise personal jurisdiction over out-of-state defendants. *See, e.g., J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011) (plurality) ("[T]hose who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter."). Those limitations serve both to protect litigants from inconvenient or distant litigation and to recognize limits on the sovereignty of each State with respect to affairs arising in other States. *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 293 (1980). The decision below threatens to obliterate those limitations by subjecting out-of-state defendants to the jurisdiction of California courts based on nonresidents' claims lacking any connection to California.

The Due Process Clause permits a state court to exercise specific jurisdiction over a defendant only when the plaintiff's claims "arise out of or relate to" the defendant's forum activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). The California Supreme Court employs a "substantial nexus or connection" test, under which the "arise out of or relate to" requirement is deemed satisfied so long as the defendant's forum contacts are sufficiently intense, even when those contacts are largely unrelated to the plaintiffs's claims. In applying its "substantial nexus or connection" test here, the court explicitly disclaimed any requirement that the defendant's activities in the forum State be the "proximate" cause, or even the "but for" cause, of the plaintiffs' injuries. Pet. App. 22a.

That test cannot be squared with this Court's personal-jurisdiction decisions. The Court's decisions have never suggested that the exercise of specific jurisdiction is appropriate when, as here, the only relationship between the plaintiffs' claims and the defendant's forum activities is a similarity of subject matter, and when none of those forum activities played any role in bringing about the plaintiffs' alleged injuries. As the Court stated categorically in a recent specific-jurisdiction case, for a court to exercise personal jurisdiction consistent with due process, "the defendant's *suit-related conduct* must create a substantial connection with the forum State." *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (emphasis added). The connection cannot be deemed "substantial" unless the defendant's forum activities are at least a but-for cause of the plaintiff's injuries.

Respondents have not pointed to any "suit-related conduct" by BMS that is connected to California. Indeed, if the conduct to which Respondents point—principally, BMS's substantial general business activity within California—suffices to create specific jurisdiction with respect to the nonresident Respondents' claims, then the due-process limitations imposed by *Daimler* on the scope of general jurisdiction will be rendered a dead letter.

To assist with the due process analysis, the Court has identified two strands of personal jurisdiction: general jurisdiction (assertions of jurisdiction in a State in which the defendant is "at home" and thus answerable to any and all claims) and specific jurisdiction (assertions of jurisdiction in a State based on a close relationship between the defendant's

in-state activities and the claims asserted). *Daimler*, 134 S. Ct. at 754. But the rationale underlying both strands is identical: due process permits a defendant to be haled into a court only if doing so is consistent with "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

*Daimler* held that subjecting a corporation to the general jurisdiction of a State's courts simply because it "engages in a substantial, continuous, and systematic course of business" within the State violates due process because it offends traditional notions of fair play and substantial justice. 134 S. Ct. at 761. Subjecting that same corporation to personal jurisdiction does not cease to offend traditional notions of fair play and substantial justice simply because the state court has re-labeled its action as an assertion of "specific jurisdiction" and (employing a "sliding scale" standard) has pointed to an insignificant relationship between the defendant's in-state activities and the claims asserted. Unless *Daimler*'s limits on subjecting a corporation to jurisdiction wherever it is "doing business" apply to both strands of personal jurisdiction, the important constitutional protections afforded out-of-state corporate defendants by *Daimler* will be meaningless.

Adopting the due-process requirement urged by BMS—a showing of a causal link between the defendant's forum contacts and the plaintiffs' claims—has the added virtue of simplicity. This Court has repeatedly advocated the adoption of clear jurisdictional rules that can be applied consistently. The sliding-scale approach adopted by the California

Supreme Court is unduly complicated and provides corporations with little if any guidance regarding when their activities within a State will subject them to the jurisdiction of that State's courts.

## ARGUMENT

### I. CALIFORNIA COURTS MAY NOT EXERCISE PERSONAL JURISDICTION OVER BMS IN THE ABSENCE OF EVIDENCE THAT BMS'S CALIFORNIA-BASED ACTIVITIES CAUSED INJURY TO RESPONDENTS

As this Court has long recognized, the Due Process Clause of the Fourteenth Amendment limits the authority of state courts to exercise personal jurisdiction over nonresident defendants that do not voluntarily consent to jurisdiction. *See, e.g.*, *J. McIntyre Machinery*, 564 U.S. at 881 (plurality) ("[T]hose who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter."). A state court may exercise personal jurisdiction over a nonresident defendant only if the plaintiff can demonstrate a relationship among the defendant, the forum state, *and* the litigation. *International Shoe*, 326 U.S. at 316. This requirement serves two important functions: it protects the defendant from being required to defend a lawsuit in an inconvenient forum and it "acts to ensure that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen*, 444 U.S. at 292.

The Court has consistently held that a state court may not exercise personal jurisdiction over an out-of-state defendant simply because the defendant has engaged in continuous and systematic activities within the State. Rather, personal jurisdiction also requires a showing that the defendant's activities are sufficiently connected to the claim. *See, e.g., Daimler*, 134 S. Ct. at 757 ("a corporation's 'continuous activity of some sort within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity'") (quoting *International Shoe*, 326 U.S. at 318); *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977) ("the central concern of the inquiry into personal jurisdiction" is "the relationship among the defendant, the forum, *and the litigation*") (emphasis added). As *Daimler* explained, personal jurisdiction may not be exercised over nonresident defendants based on claims "having nothing to do with anything that occurred or had its principal impact in" the forum state. *Daimler*, 134 S. Ct. at 762.

A defendant is generally required to answer any and all claims asserted in its "home" jurisdiction, even if the claim bears no relationship to the jurisdiction. The Court refers to an assertion of personal jurisdiction where the defendant is "at home" as an exercise of "general jurisdiction." *Goodyear*, 564 U.S. at 919. *Daimler* made plain, however, that—except in very unusual circumstances—an assertion of general jurisdiction over a corporation can be sustained in only two places: the State in which a corporation maintains its principal place of business and the State of incorporation. 134 S. Ct. at 760. In *Daimler*, the Court rejected the plaintiffs' request that it approve "the

exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business," characterizing the plaintiffs' proposed formulation as "too grasping." *Id.* at 761.

It is undisputed that BMS is not subject to general jurisdiction in California. It is not incorporated in California, nor does it maintain its principal place of business in the State. Thus, for the California courts to properly exercise personal jurisdiction over BMS with respect to each of the tort claims asserted by Respondents, it must do so on the basis of "specific jurisdiction"—that is, a showing that each claim "arises out of or relates to the defendant's contacts with the forum." *Id.* at 754.

### A. Respondents' Claims Do Not Arise out of or Relate to BMS's Contacts with California

In concluding that Respondents' claims "arise out of or relate to" BMS's contacts with California, the California Supreme Court principally relied on evidence that BMS markets Plavix on a nationwide basis and that its California marketing efforts are similar to the allegedly misleading Plavix marketing efforts undertaken by BMS in each of Respondents' home States. Pet. App. 28a. The court concluded that Respondents' claims:

> [A]re based on the same allegedly defective product and the assertedly misleading marketing and promotion of

> that product [as asserted by other, California-based plaintiffs], which allegedly caused injuries in and outside the state. Thus, the nonresident plaintiffs' claims bear a substantial connection with BMS's contacts in California.

*Ibid.*

In other words, as far as the California Supreme Court is concerned, the requisite relationship among BMS, the forum, and the litigation can be established even when, as here, "the nonresident plaintiffs' claims would be exactly the same if BMS had no contact whatever with California." *Id.* at 29a. The court rejected BMS's argument that the existence of a nationwide Plavix marketing campaign was insufficient "to establish relatedness for purposes of minimum contacts," stating that that argument "rest[ed] on the invalid assumption that BMS's forum contacts must bear some substantive legal relevance to the nonresident plaintiffs' claims." *Id.* at 30a.

Yet, the assumption that the court deemed "invalid"—that the defendant's forum contacts must "bear some legal relevance" to the plaintiffs' claims in order to satisfy the "arise out of or relate to" requirement—is an assumption that has underpinned every one of this Court's specific-jurisdiction decisions.

Thus, for example, in determining whether California courts could exercise specific jurisdiction over Florida residents in connection with a libel claim

asserted by a California resident, the Court focused its inquiry solely on forum contacts that were legally relevant to the libel claim. *Calder v. Jones*, 465 U.S. 783 (1984). The defendants were the writer and editor of an article that was widely circulated by the *National Enquirer* in California. Although the defendants were responsible for numerous other articles that were circulated in California, the only forum contacts upon which the Court relied were those related to the article that allegedly defamed the plaintiff: "petitioners are primary participants in an alleged wrongdoing intentionally directed at a California resident, and jurisdiction over them is proper on that basis." *Id.* at 790. But under the California Supreme Court's expansive understanding of specific jurisdiction, the defendants' authorship of articles directed at *other* California residents would have been sufficient by itself to satisfy due-process requirements.

Similarly, in *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984), the Court determined that the defendant's numerous contacts with the forum State (Texas) were insufficient to permit Texas to exercise personal jurisdiction because those contacts did not arise out of or relate to the plaintiffs' claims (which involved injuries arising from a helicopter crash in Peru). Yet the decision almost surely would have come out the other way under the specific-jurisdiction standard adopted by the California Supreme Court.

Although the ill-fated helicopter services were not provided in Texas, the defendant engaged in numerous helicopter-related activities within the State,

including: (1) purchase of its helicopters and spare parts within Texas; (2) sending its pilots to Texas for flight training; (3) regularly sending employees to Texas to consult with the helicopter manufacturer; (4) sending its chief executive officer to Houston to negotiate the helicopter service contract with the plaintiffs' employer; and (5) accepting checks written by the Texas-based employer and drawn on a Texas bank. None of those Texas-based activities had any "legal relevance" to the plaintiffs' claims that the defendant operated its helicopter in Peru in a negligent manner. But because the California Supreme Court does not deem "legal relevance" a prerequisite for establishing specific jurisdiction under its "significant nexus or connection" test, those numerous forum contacts (all of which related to the defendant's helicopter operations) seemingly would have been more than sufficient for the California Supreme Court to uphold personal jurisdiction.

Most recently, the Court held that a Nevada court lacked specific jurisdiction over claims against a DEA agent arising from his seizure of cash at the Atlanta airport from a Nevada resident about to board a flight home to Nevada. *Walden v. Fiore*, 134 S. Ct. 1115 (2014). The Court conceded that the injury caused by the defendant's allegedly tortious conduct occurred in Nevada by virtue of the plaintiff's Nevada residency and that the defendant was well aware of the plaintiff's residency. *Id.* at 1125. But the Court concluded that that evidence was insufficient to establish that the plaintiff's claims "arose out of or were related to" relevant forum contacts. It explained that "[f]or a State to exercise jurisdiction consistent

with due process," it is the defendant's "suit-related conduct" that must create a "substantial connection" with the forum State, *id.* at 1121, and the happenstance of the plaintiff's residency was unrelated to the defendant's allegedly tortious conduct in Atlanta.

In other words, it made no difference whether the DEA agent might have had numerous other connections with Nevada that were not "suit related." In the absence of evidence that *the defendant's conduct toward the plaintiff and his claim* had a substantial connection with Nevada, the Due Process Clause prohibited a Nevada court from exercising personal jurisdiction. The decision below, which based a finding of specific jurisdiction on BMS forum contacts that were not "suit related," cannot be reconciled with *Walden.*

As Justice Werdegar explained in her dissent below:

> Of the post-*International Shoe* decisions in which the high court actually found a factual basis for specific jurisdiction, each featured a direct link between forum activities and the litigation. (See *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 479-80 [specific jurisdiction in Florida courts proper where franchise dispute "grew directly out of" contract formed between Florida franchisor and Michigan franchisee, whose breach caused "caused foreseeable injuries to the corporation in Florida."])

Pet. App. 53a-54a.

The Court has not specified precisely how close the connection must be before the plaintiff's claims can be deemed to "grow out of" the defendant's forum-related activities. But its case law indicates that those contacts must, at the very least, be a but-for cause of the plaintiff's injury. In every case in which the Court has sustained specific jurisdiction, a causal connection existed between the defendant's forum-related activities and the claimed injury. The Court has prohibited the exercise of personal jurisdiction in cases in which there was no evidence that the forum-related activities were causally related to the injury. *See, e.g.*, *Helicopteros*, 460 U.S. at 415-19 (Defendant had numerous contacts with Texas that were not causally related to plaintiffs' injuries in Peru; those contacts were insufficient to sustain personal jurisdiction in Texas courts.); *Goodyear*, 564 U.S. at 926-27 (Defendants sold tires in North Carolina, and a defect in other tires manufactured and sold in Europe (the very same brand) caused injury to plaintiffs' decedents in Paris; defendants' North Carolina sales were insufficient to sustain specific jurisdiction in North Carolina.). Because the California Supreme Court explicitly held that the nonresident Respondents were not required to establish a causal connection (between BMS's California activities and their injuries) in order to sustain specific jurisdiction over BMS, the decision below must be reversed.

### B. The California Supreme Court Relied on Inappropriate Factors in Determining that BMS's California Contacts Were Sufficiently Related to Respondents' Claims

BMS asserted below that the factual similarity between the claims of California residents (over whose claims, all agree, the California courts are entitled to exercise jurisdiction) and those of the nonresident Respondents did not in and of itself justify California's exercise of personal jurisdiction over the claims of the nonresident Respondents. The California Supreme Court rejected that assertion, concluding that the existence of a nationwide marketing campaign for Plavix demonstrated that the claims of the nonresident and resident Respondents were closely intertwined and not merely "similar":

> [BMS's] characterization ignores the uncontested fact that all the plaintiffs' claims arise out of BMS's nationwide marketing and distribution of Plavix. The claims are based not on "similar" conduct, as our dissenting colleagues contend, but instead on a single, coordinated, nationwide course of conduct directed out of BMS's New York headquarters and New Jersey operations center and implemented by distributors and salespersons across the country.

Pet. App. 29a-30a.

But focusing on the allegedly coordinated nature of the nationwide marketing campaign does nothing to establish a causal connection between BMS's California-based activities and the injuries allegedly suffered by the nonresident Respondents. As the court recognized, the marketing campaign was coordinated from New York and New Jersey, not California. The campaign may have been "implemented by distributors and salespersons across the country," but there is no allegation that any of the distributors and salespersons who played a role in marketing Plavix to the nonresident Respondents were located in California. In the absence of evidence that the marketing of Plavix to the nonresident Respondents involved any California-based activity, the allegedly coordinated nature of that marketing is a red herring; it provides no support for an assertion that the nonresident Respondents' claims are connected to or arise out of BMS's activities in California.

Nor are Respondents' claims strengthened by the allegation that "BMS maintains research and laboratory facilities in California, and it presumably enjoys the protection of our laws related to those activities." Pet. App. 29a. It is uncontested that none of those facilities has ever conducted any research regarding Plavix. The California Supreme Court nonetheless concluded that the existence of those facilities "provides an additional connection between the nonresident plaintiffs' claims and the company's activities in California." *Ibid.* The Court justified that "substantial nexus and connection" finding on the fact that the complaint includes claims that *other* BMS research facilities located in *other* States were

responsible for the allegedly negligent development and design of Plavix.

That justification—which is based on nothing more than a similarity of function between the California-based facilities and the non-California BMS facilities responsible for BMS's allegedly tortious conduct—well illustrates the essentially limitless nature of California's assertion of personal jurisdiction over nonresident companies that conduct business within the State. It would permit the exercise of personal jurisdiction with respect to virtually all claims against an out-of-state company that engages in a substantial, continuous, and systematic course of business within California (without regard to where the claims may arise), because the in-state activities of such a company are highly likely to parallel the out-of-state activities that give rise to such claims. But *Daimler* unequivocally rejected that broad "formulation" for personal jurisdiction, terming it "unacceptably grasping." 134 S. Ct. at 761.

Nor is it relevant to the "arise out of or relate to" inquiry that Respondents also assert claims against McKesson Corporation, which (as a California corporation) is subject to the general jurisdiction of the California courts. This Court has explained that *International Shoe*'s due process requirements "must be met as to each defendant over whom a state court exercises jurisdiction" and that the assertion of jurisdiction over one defendant based solely on the activities of another defendant "is plainly unconstitutional." *Rush v. Savchuk*, 444 U.S. 320, 331-32 (1980).

The California Supreme Court's reliance on this Court's decision in *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), was misplaced. The California court asserted, "As the high court explicitly declared in *Keeton*, a 'plaintiff's residence in the forum State is not a separate requirement, and lack of residence will not defeat jurisdiction established on the basis of the defendant's contacts.'" Pet. App. at 34a (quoting *Keeton*, 465 U.S. at 780). The court badly misconstrued *Keeton*. Although the plaintiff in that case did not reside in the forum State (New Hampshire), she suffered injuries there. The defendant's allegedly libelous publication was widely circulated in New Hampshire, causing injury to the plaintiff's reputation within the State.

Indeed, *Keeton*'s heavy reliance on the defendant's litigation-related contacts with New Hampshire in upholding the exercise of personal jurisdiction by the New Hampshire court directly undercuts the California Supreme Court's position. *Keeton* quite clearly does not support the claim that exercise of specific jurisdiction is proper even though Respondents "did not suffer any Plavix-related injuries in the State." Pet. App. at 33a-34a.

### C. Interstate Federalism Principles Also Bar Exercise of Personal Jurisdiction over BMS

The California Supreme Court also sought to bolster its specific-jurisdiction holding by arguing that "judicial economy" would be served by permitting the consolidated complaints to proceed in California courts,

rather than requiring the 575 nonresident Respondents to file their factually similar claims in separate States. Pet. App. 41a-44a[3] The court concluded that coordinating all of the claims in one California court would permit common issues to be resolved more efficiently. *Ibid.*

Such efficiency considerations are simply not relevant to the due-process issue before the Court: whether the claims of the nonresident Respondents "arise out of or relate to" BMS's California activities.[4] The Court has never authorized a state court to exercise personal jurisdiction over nonresident defendants in the name of judicial efficiency, if doing so would subject the defendants to claims having little or no connection to the defendant's contacts with the forum. Indeed, the Court has made clear that the U.S. Constitution imposes territorial constraints on the jurisdiction of state courts, and that such constraints do more than simply ensure fairness to an out-of-state defendant. As the Court said in *World-Wide Volkswagen*, constitutional limits on personal jurisdiction also operate "to ensure that the States, through their courts, do not reach out beyond the limits

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[3] Of course, counsel for Respondents could avoid the problem of multiple state-court forums simply by filing all of their lawsuits in either Delaware or New York, the two States in which BMS is "at home" and thus subject to general jurisdiction.

[4] Assertions by counsel for Respondents that their clients' claims should be tried together ring particularly hollow when one considers that they deliberately filed the initial claims in eight separate lawsuits, in an apparent effort to avoid removal to federal court.

imposed on them by their status as coequal sovereigns in a federal system. . . . [W]e have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution." *World-Wide Volkswagen*, 444 U.S. at 292-93. Those federalism principles impose enforceable limits on a State's authority to project its laws outside of its own boundaries:

> Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its laws to the controversy; even if the forum state is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

*Id.* at 294.

Although recognizing that *International Shoe* marked a departure from the rigid territorial-based rules of personal jurisdiction that prevailed in the late nineteenth and early twentieth centuries, the Court has warned that:

> [I]t is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of

> state courts. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective states.

*Hanson v. Denckla*, 357 U.S. 235, 251 (1958).

Thus, while BMS (by virtue of maintaining its principal place of business in New York), is subject to the general jurisdiction of the New York courts, it unequivocally is *not* subject to the exercise of personal jurisdiction by the courts of suburban Connecticut over claims arising outside the State—even though those courts are located only a few miles away from New York and thus could be a relatively convenient location for BMS to litigate claims asserted against the company. Permitting suit in Connecticut in some circumstances might promote efficiency, but it would undercut the Framers' intent that States not be permitted to exceed the limits imposed on them by interstate federalism principles. *World-Wide Volkswagen*, 444 U.S. at 292.

As Judge Werdeger explained in dissent:

> [When] specific jurisdiction [is based] on mere similarity between a corporation's forum activities and those outside the state, ... interstate federalism is perhaps most directly impaired; by taking jurisdiction to adjudicate a dispute arising only from BMS's actions in, for

> example, Texas, and allegedly resulting in injuries only to a Texan, the California courts infringe directly on Texas's sovereign prerogative to determine what liabilities BMS should bear for actions in its borders and injuring its residents.

Pet. App. 83a. Fair play and substantial justice requires that California cease such grasping conduct.

## II. CALIFORNIA MAY NOT AVOID *DAIMLER*'S DUE-PROCESS CONSTRAINTS BY RE-LABELING ITS ACTIONS AS AN ASSERTION OF SPECIFIC JURISDICTION

The California Supreme Court appears to have been led astray by its erroneous belief that it could evade the limits on "general jurisdiction" by taking the test the Court rejected in *Daimler* and repackaging it as a form of "specific jurisdiction." That is incorrect. Regardless of which of the two strands of personal jurisdiction one applies, due process constraints still apply. Due process permits a defendant to be haled into a court only if doing so is consistent with "traditional notions of fair play and substantial justice." *International Shoe*, 326 U.S. at 316. The reasons why subjecting BMS to general jurisdiction in California offends traditional notions of fair play and substantial justice (a point conceded by the California Supreme Court) are very similar to the reasons why BMS is not subject to specific jurisdiction with respect to the claims of the nonresident Respondents.

*Daimler* rejected, as "unacceptably grasping,"

efforts to subject an out-of-state corporation to the general jurisdiction of California courts, despite allegations that it "engage[d] in a substantial, continuous, and systematic course of business" within the State. 134 S. Ct. at 761. "Traditional notions of fair play and substantial justice" permit a State to exercise "all purpose jurisdiction" over a corporation if and only if the corporation's ties with the State are sufficiently extensive that the State can fairly be considered its "home." *Id.* at 760. The Court indicated that, barring exceptional circumstances, a corporation is "at home" only in the State in which it is incorporated and the State in which it maintains its principal place of business.

For identical reasons, a State offends traditional notions of fair play and substantial justice when it purports to exercise *specific* jurisdiction over an out-of-state corporation based primarily on allegations that the corporation engaged in a substantial, continuous, and systematic course of business within the State. Yet that is precisely what the California Supreme Court is attempting to do in this case. Employing its sliding scale approach, the court declared that BMS's extensive business contacts with California substantially lessened any need for Respondents, in order to establish specific jurisdiction, to demonstrate a relationship between BMS's forum contacts and their claims. Pet. App. 22a.[5] Indeed, the Court indicated

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[5] The court explained its sliding-scale approach as follows: "The more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim." *Ibid.*

that when the corporation's business contacts with California are wide-ranging, virtually *any* relationship between those contacts and the plaintiffs' claims will be sufficient to establish specific jurisdiction. *Ibid* ("Indeed, *only* when the operative facts of the controversy *are not related* to the defendant's contact with the state can it be said that the cause of action does not arise from that contact.") (emphasis added).

As the preceding quotations make plain, the California Supreme Court's sliding-scale approach is, in effect, an effort to exert all-purpose jurisdiction over BMS and other large, nationwide corporations by re-labeling the court's actions. What in a pre-*Daimler* world was categorized as an assertion of general jurisdiction over large corporations is now categorized as an assertion of specific jurisdiction. But the result is the same: under the decision below, California courts may assert personal jurisdiction over any large corporation that operates on a nationwide basis, even with respect to tort claims asserted by nonresident plaintiffs based on injuries incurred in other States.[6]

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[6] The alleged relationships between "the operative facts of the controversy" and the BMS forum contacts cited by the California Supreme Court—*e.g.*, the establishment of a nationwide marketing campaign directed from outside California that marketed Plavix both to California residents and to the nonresident Respondents, the existence of BMS research facilities in California that performed no Plavix-related research, a contractual relationship with a California-based distribution company that played no role in distributing Plavix to nonresident Respondents—are the sorts of relationships one would expect *any* large company to maintain if it engages in a substantial, continuous, and systematic course of business within California.

Subjecting a corporation to personal jurisdiction does not cease to offend traditional notions of fair play and substantial justice simply because the state court has re-labeled its action as an assertion of "specific jurisdiction" and (employing a "sliding scale" standard) has pointed to an insignificant relationship between the defendant's in-state activities and the claims asserted. Unless *Daimler*'s limits on subjecting a corporation to jurisdiction wherever it is "doing business" apply to both strands of personal jurisdiction, the important constitutional protections afforded out-of-state corporate defendants by *Daimler* will be rendered meaningless.

## III. THE CALIFORNIA SUPREME COURT'S TEST LACKS PREDICTABILITY AND THUS FAILS TO PROVIDE BUSINESSES WITH GUIDANCE REGARDING WHERE THEIR CONDUCT MAY RENDER THEM LIABLE TO SUIT

The Court explained in *Daimler* that it adopted its rule governing general jurisdiction over corporations in part because of its simplicity. Ascertaining a corporation's principal place of business and its place of incorporation—the attributes that *Daimler* held are determinative in assessing where a corporation is "at home"—is a relatively straightforward exercise:

> Those affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable. Cf. *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) ("Simple jurisdictional rules . . . promote greater

> predictability."). These bases afford plaintiffs at least one clear and certain forum in which a corporate defendant may be sued on any and all claims.

*Daimler*, 134 S. Ct. at 760.

Numerous other decisions of the Court have stressed the importance of adopting straightforward, easy-to-administer rules governing federal court jurisdiction. For example, at issue in one recent case was whether a *parens patriae* lawsuit filed by Mississippi to recover damages suffered by its citizens qualified as a CAFA mass action, and thus fell within the district court's removal jurisdiction. *Mississippi ex rel. Hood v. AU Optronics Corp.*, 134 S. Ct. 736, 739 (2014). The Court stated that its holding—that individuals not named in a complaint could not be counted as CAFA "plaintiffs" (and thus that CAFA's 100-plaintiff jurisdictional threshold had not been achieved)—was based in part on its conclusion that a contrary holding would unduly complicate a district court's decision-making process on a jurisdictional issue—by requiring district courts to embroil themselves in numerous factual inquiries regarding the claims of individuals not named in the complaint. *AU Optronics*, 134 S. Ct. at 743-44. The Court stated that construing CAFA "plaintiffs" to include only named parties "leads to a straightforward, easy to administer rule." *Id.* at 744. It added, "Our decision thus comports with the commonsense observation that 'when judges must decide jurisdictional matters, simplicity is a virtue.'" *Ibid* (quoting *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1350 (2013)).

By upholding personal jurisdiction under its expansive definition of specific jurisdiction, the California Supreme Court has adopted a jurisdictional rule that is anything but simple. Among other things, the court's "substantial nexus or connection test" establishes a sliding scale, under which a showing that the defendant has numerous forum contacts (regardless whether they are causally related to the claims asserted) reduces the required showing of a connection between those contacts and the plaintiffs' claim. Pet. App. 22a. But the unspecified degree of reduction is left to be resolved by California courts on a case-by-case basis. *Id.* at 35.

As a result, out-of-state corporations are left with little guidance regarding what activity in California will render them subject to the jurisdiction of California courts for claims arising outside the State. That result is inconsistent with *Daimler*'s goal of predictability and thus exacerbates due process concerns.

The court below did not dispute the highly attenuated nature of the relationship between California and the Respondents' claims. It nonetheless concluded that California courts could exercise specific jurisdiction over Respondents' claims based on a smorgasbord of BMS forum contacts. At no point did it specify which of those contacts, by themselves, would be sufficient to establish personal jurisdiction. Indeed, although the court noted that some Plavix-based products-liability claims have been filed by California residents against BMS based on theories similar to those raised by the nonresident Respondents, the court

never specified whether the existence of such claims was crucial to its personal-jurisdiction finding.

A rule so amorphous provides corporations with no guidance whatsoever. The California Supreme Court insists that the nonresident Respondents' claims "arise out of or are connected with" BMS's forum contacts, but BMS and other nonresident defendants are left to wonder precisely what that connection consists of. One plausible interpretation: manufacturers that market their products on a nationwide basis are subject to suit in each of the 50 States with respect to *any* claim arising out of the sale of their products. BMS is hardly unique among manufacturers in distributing its products pursuant to a nationwide distribution and marketing plan. But if this Court upholds the California Supreme Court's rule, little is left of *Daimler*; the Court will simply have substituted a new name (specific jurisdiction) for the exorbitant understanding of general jurisdiction it rejected in *Daimler* as too grasping.

As *Daimler* explained in rejecting the Ninth Circuit's expansive understanding of personal jurisdiction over nonresident defendants based on claims arising outside the forum, "Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants 'to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" *Daimler*, 134 S. Ct. at 761-62 (quoting *Burger King Corp. v. Rudzewicz* 471 U.S. at 472).

The court below dismissed those concerns, asserting that BMS "embraced th[e] risk" of being sued in California by nonresident plaintiffs when it decided to include California within its nationwide Plavix sales efforts. Pet. App. 33a. But it is unrealistic to expect large manufacturers to exclude California from their marketing efforts.[7] More importantly, the court's rationale is inconsistent with *Daimler*'s condemnation of "exorbitant exercises of all-purpose jurisdiction" by California courts based merely on evidence that the defendant engaged in continuous and systematic business activity within the State. The Court should establish a rule that provides clear guidance to the business community regarding the extent of forum contacts, beyond simply conducting business on a continuous and systematic basis, that is sufficient to expose companies to the specific jurisdiction of forum courts. The due-process requirement urged by BMS—a showing of a causal link between the defendant's forum contacts and the plaintiffs' claims—is a rule that would provide appropriate clarity to the business community, in addition to being consistent with this Court's due-process case law.

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[7] Moreover, it is not consistent with "traditional notions of fair play and substantial justice," *International Shoe*, 326 U.S. at 316, to require a company—in return for the privilege of marketing a product in a State—to agree to be answerable in the State's courts for 100% of the tort suits arising nationwide from that marketing effort. Rather, if a company's sales within a State amount to 3% of a product's nationwide sales, it should reasonably anticipate that roughly 3% of the tort claims arising from those sales will be filed in the State's courts.

## CONCLUSION

The Court should reverse the judgment of the California Supreme Court.

Respectfully submitted,

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